

BEFORE THE ARIZONA CORPORATION COMMISSION  
Arizona Corporation Commission

COMMISSIONERS

DOCKETED

JEFF HATCH-MILLER Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

NOV 14 2005

DOCKETED BY

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IN THE MATTER OF THE DISSEMINATION OF  
INDIVIDUAL CUSTOMER PROPRIETARY  
NETWORK INFORMATION BY  
TELECOMMUNICATION CARRIERS.

DOCKET NO. RT-00000J-02-0066

DECISION NO. 68292

OPINION AND ORDER

DATE OF HEARING: January 31, 2005

PLACE OF HEARING: Phoenix, Arizona

PUBLIC COMMENTS: November 5, 2004, Flagstaff and Prescott;  
November 18, 2004, Kingman;  
November 19, 2004, Lake Havasu City;  
December 6, 2004, Yuma;  
December 16, Bisbee and Sierra Vista;  
December 17, 2004, Benson and Willcox;  
January 31, 2005, Phoenix;  
March 16, 2005, Tucson; and  
March 17, 2005, Green Valley, Arizona.

IN ATTENDANCE: Marc Spitzer, Commissioner  
William A. Mundell, Commissioner  
Mike Gleason, Commissioner  
Kristin K. Mayes, Commissioner

ADMINISTRATIVE LAW JUDGE: Teena Wolfe<sup>1</sup>

APPEARANCES: Ms. Maureen A. Scott and Mr. Timothy J. Sabo, Staff  
Attorneys, Legal Division, on behalf of the Utilities  
Division of the Arizona Corporation Commission

**BY THE COMMISSION:**

On January 28, 2002, in Decision No. 64375, the Arizona Corporation Commission ("Commission") ordered that an investigation be commenced on an expedited basis to examine and address the Customer Proprietary Network Information ("CPNI") policies, notice and verification requirements for telecommunications carriers providing service within the State of Arizona, and that

<sup>1</sup> Administrative Law Judge Teena Wolfe conducted the hearing in this proceeding and Administrative Law Judge Amy Bjelland drafted the Recommended Opinion and Order.

1 the record from the ordered investigation be used as the basis for the adoption of rules or a  
2 Commission Order establishing appropriate guidelines for notice, verification and CPNI  
3 dissemination requirements. Decision No. 64375 further ordered telecommunications companies to  
4 delay implementation of an "opt-out" CPNI policy pending the conclusion of the ordered  
5 investigation and the subsequent issuance of rules or a Commission Order establishing those  
6 guidelines.

7 On February 15, 2002, the Director of the Commission's Utilities Division issued a letter to  
8 all telecommunications industry members and other interested parties soliciting comments on a list of  
9 questions. The letter stated that based on the comments, the Commission's Utilities Division Staff  
10 ("Staff") would formulate a recommendation to the Commission relating to company notice,  
11 verification and dissemination requirements. In response, Citizens Communications ("Citizens");  
12 Qwest Corporation ("Qwest"); Valley Telephone Cooperative, Inc., Copper Valley Telephone, Inc.  
13 and Valley Telecommunications Company, Inc. (collectively, "the Valley Companies"); Sprint  
14 Communications Company ("Sprint"); the Residential Utilities Consumer Office ("RUCO"); AT&T  
15 Communications of the Mountain States, Inc. ("AT&T"); Worldcom, Inc.; and Cox Arizona Telcom  
16 ("Cox") filed comments.

17 On October 25, 2002, Staff filed a Report and Recommendation in this matter. Staff  
18 acknowledged in its Report and Recommendation the significant impact the adoption of CPNI rules  
19 will have upon Arizona's telecommunications carriers, and stated that in light of responses to data  
20 requests; a recent order of the Federal Communications Commission ("FCC") that governs how  
21 phone companies may share and market customer information; and the impact rules will have upon  
22 carriers; Staff believed it would be beneficial to have a workshop to discuss the Staff proposals and  
23 any changes interested parties believed to be appropriate before a formal rulemaking was  
24 commenced.

25 On April 5, 2004, Staff docketed a copy of its first draft of proposed CPNI rules that were  
26 provided to the interested parties in this docket. The draft contained three sets of proposed CPNI  
27 rules, and stated that Staff encouraged all interested parties to provide comments and input. The  
28 filing requested that interested parties review the proposed rules and file their comments with the

Commission on or before May 17, 2004. In response, AT&T, Cox, the Arizona Local Exchange Carrier Association ("ALECA"), Qwest, MCI, RUCO, and Sprint filed comments.

On August 13, 2004, Staff docketed a newly revised set of proposed CPNI rules for the review and comment of interested parties, and requested that the parties file comments. Staff's filing also invited all interested parties to a workshop to be held on September 2, 2004 at the Commission's offices. In response, RUCO, AT&T, Qwest, MCI, Cox, the Arizona Wireless Carriers Group ("Wireless Carriers") and Sprint filed comments.

On October 20, 2004, the Commission issued Decision No. 67355 in this matter, ordering that a Notice of Proposed Rulemaking for Proposed Rules A.A.C. R14-2-2101 through A.A.C. R14-2-2112 ("Proposed CPNI Rules" or "Proposed Rules") be forwarded to the Arizona Secretary of State for publication in the Arizona Administrative Register for a Notice of Proposed Rulemaking.

On October 28, 2004, a Procedural Order was issued. In addition to setting the formal public comment hearing scheduled for January 31, 2005, the October 28, 2004 Procedural Order also provided notice of public comment sessions to be held in Flagstaff, Prescott, Kingman, Lake Havasu City, Yuma, Sierra Vista, Bisbee, Willcox, and Benson, during the months of November and December, 2004.

The formal public comment hearing was held as scheduled on January 31, 2005. A March 9, 2005 Procedural Order also provided notice of two additional public comment sessions scheduled to be held in Tucson and Green Valley on March 16 and 17, 2005, respectively.

On March 17, 2005, Staff filed a Late Filed Exhibit, consisting of carriers' responses to Staff's Data Requests sent in this docket.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

#### **FINDINGS OF FACT**

1. On January 25, 2002, Staff filed a Memorandum with the Commission's Docket Control Center requesting that a docket be opened regarding the Dissemination of Individual Customer Proprietary Network Information by Telecommunications Carriers.

1           2.     On January 28, 2002, in Decision No. 64375, the Commission ordered that an  
2 investigation be commenced on an expedited basis to examine and address the CPNI policies, notice  
3 and verification requirements for telecommunications carriers providing service within the State of  
4 Arizona, and that the record from the ordered investigation be used as the basis for the adoption of  
5 rules or a Commission Order establishing appropriate guidelines for notice, verification and CPNI  
6 dissemination requirements. Decision No. 64375 further ordered telecommunications companies to  
7 delay implementation of an "opt-out" CPNI policy pending the conclusion of the ordered  
8 investigation and the subsequent issuance of rules or a Commission Order establishing those  
9 guidelines.

10           3.     On January 30, 2002, the Commission sent a letter to the FCC's CPNI and Other  
11 Customer Information Docket indicating support of the adoption of an "opt-in" CPNI requirement.

12           4.     On February 15, 2002, the Director of the Commission's Utilities Division issued a  
13 letter to all telecommunications industry members and other interested parties soliciting comments on  
14 a list of questions. The letter stated that based on the comments, Staff would formulate a  
15 recommendation to the Commission relating to company notice, verification and dissemination  
16 requirements for CPNI.

17           5.     On March 4, 2002, a letter from Commission Chairman Mundell to Senator McCain  
18 was filed in this docket, indicating that Senator McCain had been supplied with a copy of the  
19 Commission's letter to the FCC. On March 19, 2002, Senator McCain sent a letter to Commissioner  
20 Mundell, subsequently filed in this docket, commending the Commission for its efforts regarding  
21 Qwest's proposed use of private customer telephone account information.

22           6.     On March 28, 2002, Citizens filed responses to Staff's CPNI issues list that were set  
23 forth in Staff's February 15, 2002 letter on behalf of its three Incumbent Local Exchange Carrier  
24 ("ILEC") affiliates operating in Arizona: Frontier Citizens Utilities Rural, Frontier Communications  
25 of the White Mountains, and Navajo Communications Company.

26           7.     On March 29, 2002, Qwest, the Valley Companies, Sprint, RUCO, AT&T, and  
27 Worldcom, Inc. filed responses to Staff's CPNI issues list that were set forth in Staff's February 15,  
28 2002 letter.

1           8.     On April 5, 2002, Cox filed responses to Staff's CPNI issues list that were set forth in  
2 Staff's February 15, 2002 letter.

3           9.     On April 29, 2002, Qwest filed Reply Comments in this docket.

4           10.    On May 13, 2002, AT&T filed a Notice of Filing Direct Testimony on behalf of  
5 AT&T.

6           11.    On July 10, 2002, Qwest filed a Notice of Supplemental Authority.

7           12.    On October 25, 2002, Staff filed a Report and Recommendation in this matter. Staff  
8 acknowledged in its Report and Recommendation the significant impact the adoption of CPNI rules  
9 will have upon Arizona's telecommunications carriers, and stated that in light of responses to data  
10 requests; a recent order of the FCC that governs how phone companies may share and market  
11 customer information; and the impact rules will have upon carriers; Staff believed it would be  
12 beneficial to have a workshop to discuss the Staff proposals and any changes interested parties  
13 believed to be appropriate before a formal rulemaking was commenced. Staff conducted a workshop  
14 to discuss its proposals and allow interested parties to provide input prior to docketing proposed  
15 rules.

16           13.    On April 5, 2004, Staff docketed a copy of its first draft of proposed CPNI rules that  
17 were provided to the interested parties in this docket. The draft contained three sets of proposed  
18 CPNI rules, and stated that Staff encouraged all interested parties to provide comments and input.  
19 The filing requested that interested parties review the proposed rules and file their comments with the  
20 Commission on or before May 17, 2004.

21           14.    On May 17, 2004, AT&T, Cox, ALECA, Qwest, MCI, RUCO, and Sprint filed  
22 comments in response to Staff's first draft of proposed CPNI rules.

23           15.    On August 13, 2004, Staff docketed a newly revised set of proposed CPNI rules for  
24 the review and comment of interested parties, and requested that the parties file comments. Staff's  
25 filing also invited all interested parties to a workshop to be held on September 2, 2004 at the  
26 Commission's offices.

27           16.    On August 27, 2004, RUCO filed its response to Staff's Second Draft of proposed  
28 CPNI rules. On August 30, 2004, AT&T, Qwest, MCI, Cox, and the Wireless Carriers filed

1 comments in response to Staff's Second Draft of CPNI Rules. On August 31, 2004, Sprint filed  
2 comments in response to Staff's Second Draft of CPNI Rules.

3 17. On October 20, 2004, the Commission issued Decision No. 67355 in this matter,  
4 ordering that a Notice of Proposed Rulemaking for Proposed Rules A.A.C. R14-2-2101 through  
5 A.A.C. R14-2-2112 be forwarded to the Arizona Secretary of State for publication in the Arizona  
6 Administrative Register for a Notice of Proposed Rulemaking.

7 18. On October 28, 2004, a Procedural Order was issued in this matter pursuant to  
8 Decision No. 67355 ordering that public comment be scheduled regarding the proposed CPNI rules.  
9 The Procedural Order requested that interested parties file comments on the proposed rules attached  
10 to Decision No. 67355 in this docket on or before December 22, 2004, and that responsive comments  
11 be filed on or before January 19, 2005. In addition to the formal public comment hearing scheduled  
12 for January 31, 2005, the October 28, 2004 Procedural Order also provided notice of public comment  
13 sessions to be held in Flagstaff, Prescott, Kingman, Lake Havasu City, Yuma, Sierra Vista, Bisbee,  
14 Wilcox, and Benson, during the months of November and December, 2004.

15 19. On October 29, 2004, Rural Network Services filed its Response to Staff's Second Set  
16 of Data Requests.

17 20. On November 1, 2004, Midvale Telephone filed its Response to Staff's Second Set of  
18 Data Requests.

19 21. On December 21, 2004, Qwest filed comments on the Proposed Rules.

20 22. On December 22, 2004, the Wireless Carriers, MCI, Citizens, Sprint, and Cox filed  
21 comments on the Proposed Rules.

22 23. On January 19, 2005, MCI and Sprint and Staff filed Response comments. On  
23 January 20, 2005, Verizon filed Response comments.

24 24. The formal public comment hearing was held as scheduled on January 31, 2005. Staff  
25 appeared through counsel and provided verification of the Notice of Proposed Rulemaking having  
26 been published in the Arizona Administrative Register on November 26, 2004. Staff also entered as  
27 an exhibit at the public comment hearing a copy of the Economic Impact Statement pursuant to  
28 A.R.S. § 41-1055 prepared by Staff. Staff also requested leave to file responses received from

1 interested parties to data requests promulgated by Staff.

2 25. It was announced at the formal public comment hearing that the additional filings  
3 would be allowed, and that interested parties would be allowed a period of at least two weeks to  
4 respond to those comments.

5 26. On March 9, 2005, a Procedural Order was issued providing a deadline date for the  
6 filing of the responsive comments referenced by Staff at the January 31, 2005 formal public comment  
7 hearing. The Procedural Order also provided notice of two additional public comment sessions  
8 scheduled to be held in Tucson and Green Valley on March 16 and 17, 2005, respectively.

9 27. On March 17, 2005, Staff filed its Late Filed Exhibit, consisting of responses to  
10 Staff's Data Requests sent in this docket.

11 28. On April 7, 2005, Arizona Wireless and Cox filed Responses to Staff's Late-Filed  
12 Exhibit.

13 29. On April 13, 2005, Staff filed its Response to Arizona Wireless. Arizona Wireless  
14 filed Comments to Staff's Response on April 25, 2005.

15 30. A summary of the comments that the Commission received on specific sections of the  
16 Proposed Rules following their publication, including both technical and legal issues, and the  
17 Commission's analysis and resolution of those comments, are included in the Summary of Comments  
18 and Response, which is attached hereto as Appendix B and incorporated herein by reference.  
19 Appendix B was prepared in accordance with A.R.S. § 41-1001(14)(d)(iii), and is to be included in  
20 the Preamble to be published with the Notice of Final Rulemaking.

21 31. In response to comments received, some clarifying language has been incorporated in  
22 some sections of the Proposed Rules, as explained in Appendix B, but no substantial changes to the  
23 Proposed Rules are required.

24 32. The text of the Proposed Rules incorporating the clarifying modifications is set forth  
25 in Appendix A, attached hereto and incorporated herein by reference.

26 33. No Notice of Supplemental Rulemaking is required.

27 34. Prepared in accordance with A.R.S. § 41-1055, the Economic, Small Business, and  
28 Consumer Impact Statement is set forth in Appendix C, attached hereto and incorporated herein by

1 reference.

2 **CONCLUSIONS OF LAW**

3 1. Pursuant to Article XV of the Arizona Constitution, Ariz. Rev. Stat. §§ 40-202, 40-  
4 203, 40-321 and 40-322, and § 44-1572 *et seq.*, the Commission has jurisdiction to enact A.A.C.  
5 R14-2-2101 through A.A.C. R14-2-2112.

6 2. Notice of the hearing was given in the manner prescribed by law.

7 3. The Proposed Rules as set forth in Appendix A contain no substantial changes from  
8 the Proposed Rules published in the Notice of Proposed Rulemaking.

9 4. Enactment of A.A.C. R14-2-2101 through A.A.C. R14-2-2112 as set forth in  
10 Appendix A is in the public interest.

11 5. The Summary of Comments and Response set forth in Appendix B should be adopted.

12 **ORDER**

13 IT IS THEREFORE ORDERED that proposed A.A.C. R14-2-2101 through A.A.C. R14-2-  
14 2112 as set forth in Appendix A, and the Summary of Comments and Response as set forth in  
15 Appendix B, are hereby adopted.

16 IT IS FURTHER ORDERED that the Economic, Small Business, and Consumer Impact  
17 Statement, as set forth in Appendix C, is hereby adopted.

18 IT IS FURTHER ORDERED that the Commission's Utilities Division shall submit adopted  
19 Rules A.A.C. R14-2-2101 through A.A.C. R14-2-2112, as set forth in Appendix A; the Summary of  
20 Comments and Response, as set forth in Appendix B; and the Economic, Small Business, and  
21 Consumer Impact Statement, as set forth in Appendix C; to the Office of the Attorney General for  
22 endorsement.

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1 IT IS FURTHER ORDERED that the Commission's Utilities Division is authorized to make  
 2 non-substantive changes in the adopted A.A.C. R14-2-2101 through A.A.C. R14-2-2112, and to the  
 3 adopted Summary of Comments and Response, in response to comments received from the Attorney  
 4 General's office during the approval process pursuant to A.R.S. § 41-1044 unless, after notification  
 5 of those changes, the Commission requires otherwise.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8  
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 10 CHAIRMAN

  
 COMMISSIONER

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 12 COMMISSIONER

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13  
 14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
 15 Director of the Arizona Corporation Commission, have  
 16 hereunto set my hand and caused the official seal of the  
 17 Commission to be affixed at the Capitol, in the City of Phoenix,  
 18 this 14<sup>th</sup> day of NOV., 2005.

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 21 BRIAN C. McNEIL  
 22 EXECUTIVE DIRECTOR

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Appendix A

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND  
ASSOCIATIONS; SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES**

**ARTICLE 21. Customer Proprietary Network Information**

R14-2-2101	Application of the Rule.
R14-2-2102	Definitions.
R14-2-2103	Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services
R14-2-2104	Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates that Do Not Provide Communications-Related Services.
R14-2-2105	Information Requirements for Customer CPNI Opt-In Notice.
R14-2-2106	Additional Informational Requirements for Customer Opt-Out Notice.
R14-2-2107	Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact.
R14-2-2108	Verification of Customer Opt-Out Approval to Use CPNI.
R14-2-2109	Confirming a Customer's Opt-In Approval.
R14-2-2110	Reminders to Customers of Their Current CPNI Release Election.
R14-2-2111	Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI.
R14-2-2112	Severability.

**R14-2-2101. Application of the Rule.**

These rules govern the treatment of Customer Proprietary Network Information (CPNI) for all telecommunications carriers that provide telecommunications service in Arizona. In addition, the Commission adopts, incorporates, and approves as its own 47 CFR § 64.2001 through 2009, revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975. These rules are in addition to the FCC rules and together with the FCC rules govern the release of CPNI in Arizona.

**R14-2-2102. Definitions.**

For purposes of this Article, the following definitions apply unless the context otherwise requires:

1. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.
2. "Communications-related services" means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.
3. A "Customer" of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.
4. "Customer premise equipment" means equipment employed on the premises of a person (other than a telecommunications carrier) to originate, route, or terminate telecommunications.
5. "Customer proprietary network information (CPNI)" means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. See 47 U.S.C. § 222(h)(1) revised 1999 (and no future amendments), incorporated by reference and copies available from the



Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

6. "Non-listed Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory but are available through directory assistance.
7. "Non-published Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory and are not otherwise available through directory assistance.
8. "Opt-In approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI that requires that the telecommunications carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided notification of the carrier's request in conformance with section R14-2-2105.
9. "Opt-Out approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI where a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to affirmatively object to approval within the 30-day waiting period provided in R14-2-2103(C) after the customer is provided the notice as required in R14-2-2106, subject to the requirements of section R14-2-2108.
10. "Published" means authorized for voluntary disclosure by the individual identified in the listing.
11. "Subscriber list information" means any information identifying the listed names of subscribers of a telecommunications carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. See 47 U.S.C. § 222(e)(1) revised 1999 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
12. "Telecommunications carrier" means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, which provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.
13. "Third Party" means a person who is not the customer, the customer's telecommunications service provider, an affiliate, joint venture partner, or independent contractor of the customer's telecommunications service provider.

**R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners and/or Independent Contractors Providing Communications-Related Services.**

- A. A telecommunications carrier may, subject to obtaining opt-out approval or opt-in approval:
  1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing to that customer communications-related services of a category to which the customer does not already subscribe to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;
  2. Permit such persons or entities to obtain access to such CPNI for such purposes.
- B. Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-2105 of these rules. For the purpose of obtaining opt-out approval, the notice must comply with the requirements of Section R14-2-2106 of these rules.
- C. Telecommunications carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose or permit access to CPNI. A telecommunications carrier may, in its discretion, provide for a longer period.
- D. The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement must meet the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington,

Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

**R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services.**

- A. A telecommunications carrier may, subject to opt-in approval, use, disclose, or permit access to its customer's individually identifiable CPNI to affiliates that do not provide telecommunications-related services.
- B. A telecommunications carrier may use, disclose, or permit access to its customer's individually identifiable CPNI to a third party only upon written, electronic, or oral request by the customer that specifically identifies the third party to whom the CPNI may be disseminated.
- C. Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-2105 of these rules.
- D. The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement must meet the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
- E. A telecommunications company relying on "Opt-In" approval must bear the burden of demonstrating that such approval has been given in compliance with sections R14-2-2104 and R14-2-2105 of these rules.
- F. This article does not prohibit the use and disclosure of CPNI for the purpose of sharing customer records necessary for the provisioning of service by a competitive carrier as provided in section 222(c)(1) of the Communications Act of 1934, as amended (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

**R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice.**

- A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:
  - 1. Include language the same as or substantially similar to the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;
  - 2. State that the customer has a right to direct the company not to use the customer's CPNI or limit the use, disclosure, and access to the customer's CPNI;
  - 3. State that the telecommunications company has a duty to comply with the customer's limitations on use, disclosure of, and access to the information;
  - 4. State that CPNI includes all information related to specific calls initiated or received by a customer;
  - 5. Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and this information is not subject to the same limitations of use;
  - 6. Inform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes;
  - 7. State that any customer approval for use, disclosure of, or access to CPNI may be revoked or limited at any time; and
  - 8. Be posted on the company's web site.
- B. Written notice must:

1. Be mailed separately or be included as an insert in a regular monthly bill within an envelope that clearly and boldly states that important privacy information is contained therein;
  2. Be clearly legible, in twelve-point or larger print;
  3. Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.
- C. Electronic notice must:
1. Be e-mailed separately from any billing information, inducements, advertising, or promotional information;
  2. Be clearly legible, in twelve-point or larger print;
  3. Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.

**R14-2-2106. Additional Information Requirements for Customer Opt-Out Notice.**

- A. A telecommunications carrier may provide notification to obtain opt-out approval through, written, or electronic methods, but not orally (except as provided in section R14-2-2107).
- B. The contents of any such notification must comply with section R14-2-2105 and with the following requirements.
- C. Telecommunications carriers must notify customers as to the applicable waiting period (minimum 30-days as provided in R14-2-2103(C)) for a response before opt-out approval is assumed.

**R14-2-2107. Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact.**

A telecommunications carrier may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether telecommunications carriers use opt-out or opt-in approval based on the nature of the contact.

**R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI.**

- A. Verification of a customer's opt-out approval must be obtained within one year. Verification of the customer's approval shall be obtained in accordance with the procedures set forth below. Carriers may request an extension of the verification time period subject to Commission approval.
- B. Verification of the customer's approval may be obtained through written, oral, or electronic methods. All verification methods shall be conducted in the same languages that were used in the initial notification and shall elicit at a minimum:
  1. The identity of the customer;
  2. Confirmation that the person responding to the verification request is authorized to make CPNI available to the telecommunications company;
  3. Confirmation that the customer wants to make the CPNI release verification;
  4. The telephone numbers for which CPNI information release is authorized; and
  5. The types of service involved.
- C. Written verification obtained by a telecommunications carrier shall:
  1. Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article;
  2. Be signed and dated by the customer authorizing the use of the customer's CPNI; and
  3. Not be combined with any inducement.
- D. Electronic verification obtained by a telecommunications carrier shall:
  1. Include electronically signed letters of authority;
  2. Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article; and
  3. Not be combined with any inducement.
- E. Oral verification obtained by a telecommunications carrier shall:
  1. Be recorded; and
  2. Not be combined with any inducement.
- F. If a telecommunications company fails to obtain verification within one year of obtaining a customer's opt-out approval, the authorization to use, disclose, or permit access to that customer's CPNI is no longer valid. If verification from the customer is not received within one year as required, the company shall

direct any entities (affiliates, joint-venture partners, or independent contractors) to whom it has released CPNI to stop using the CPNI.

- G. As a result of failure to obtain verification within one year, the company and any other entities (affiliates, joint-venture partners, or independent contractors) may not use, disclose, or permit access to that customer's CPNI until verification is obtained.
- H. Carriers may request an extension of the verification time period subject to Commission approval.

**R14-2-2109. Confirming a Customer's Opt-In Approval.**

- A. Each time a telecommunications company receives a customer's "Opt-In" approval to allow the telecommunications company to make CPNI available to itself, its affiliates, independent contractors or joint venture partners, the telecommunications company must confirm in writing the change in approval status to the customer within ten days.
- B. The written confirmation must be mailed or e-mailed to the customer.
- C. The confirmation must be separate from any other mail from the telecommunications company.
- D. The confirmation must clearly advise the customer of the effect of the customer's opt-in choice and must provide a reasonable method to notify the telecommunications company, including a toll free telephone number if the telecommunications company made an error in changing the customer's approval status.

**R14-2-2110. Reminders to Customers of Their Current CPNI Release Election.**

- A. Telecommunications companies that have obtained opt-out or opt-in approval must notify customers of their current election regarding the treatment of their CPNI every twelve months.
  - 1. In the case of opt-out approval, the notification must remind customers of their election to allow the company to:
    - a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe; and
    - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services.
  - 2. In the case of opt-in approval, the notification must remind customers of their election to allow the company to:
    - a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
    - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services; and
    - c. Provide their information to its affiliates that provide non-communications-related services.
  - 3. In the case of customer specified third party approval by written, oral, or electronic request, the notification must remind customers of their election to allow the company to:
    - a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
    - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services;
    - c. Provide their information to its affiliates that provide non-communications-related services; and
    - d. Provide their information to specifically identified third parties as requested in writing by the customer.
- B. The notice must not be mailed with any advertising or promotional information.
- C. The notice shall not be included with the customer's bill.

**R14-2-2111. Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI.**

Any approval of the use of CPNI received by a telecommunications carrier will remain in effect until the customer revokes, modifies, or limits such approval.

**R14-2-2112. Severability.**

If any provision of this Article is found to be invalid, it shall be deemed severable from the remainder of this Article and the remaining provisions of this Article shall remain in full force and effect.

**Appendix B****SUMMARY OF THE COMMENTS MADE REGARDING THE RULE AND THE AGENCY  
RESPONSE TO THEM****ARTICLE 21. CUSTOMER PROPRIETARY NETWORK INFORMATION****R14-2-2101 – Application of the Rule.**

**Issue:** Qwest and Arizona Wireless Carriers contend, and MCI and Sprint concur, that the proposed rules should apply only to intrastate CPNI. Qwest argues that the Federal Communications Commission's ("FCC") Third Report and Order (FCC 02-214 Rel. July 25, 2002) ("FCC Order") preempts Staff's proposed CPNI rules.

Staff contends that the proposed rules apply to all CPNI gathered by telecommunications carriers that provide telecommunications service in Arizona. Staff states that the Arizona proposed rules incorporate the FCC rules, going beyond them in certain instances. Staff further notes that the FCC's Order allows states to go beyond federal standards for purposes of the release of CPNI in a particular state; therefore, the Arizona rules apply to all CPNI released in Arizona.

**Analysis:** The proposed rules were promulgated as a direct result of concern on the part of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm of consumer phone calls and letters to the Corporation Commission from people concerned about the safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting specifically to address customer's concerns about this very issue. Many customers appeared and spoke before the Commission regarding their grave concerns regarding the release of their CPNI. Many stated their desire that the release of their CPNI should be their choice, rather than their telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of their CPNI.

1 The proposed rules directly advance the state's interest in protecting the customers'  
 2 information and engaging the customer in an active and informed way in controlling how  
 3 telecommunications carriers use and disseminate, or whether they disseminate, CPNI.

4 Staff's proposed CPNI rules are narrowly tailored to serve the interests articulated  
 5 above. The benefits of protecting customer information outweigh the comparatively minimal burden  
 6 that the time, place and manner restrictions on commercial speech the proposed rules will place on  
 7 the carriers.

8 **Resolution:** No change necessary.

9  
 10 **R14-2-2102 – Definitions.**

11 **R14-2-2102(10)**

12 **Issue:** AT&T states its understanding that telephone numbers are considered published  
 13 unless the customer specifically requests that the telephone number not be published; thereby the  
 14 authorization to publish is implied. AT&T is concerned that defining "published" as "authorized for  
 15 voluntary disclosure by the individual identified in the listing" creates a substantive requirement that  
 16 carriers seek express authorization in order to publish a customer's telephone number in directories.

17 **Analysis:** The term "published" appears only once outside of the definitions section.  
 18 Specifically, R14-2-2105(A) provides that "A telecommunications carrier may provide notification to  
 19 obtain opt-in approval through oral, written, or electronic methods. The contents of any such  
 20 notification must: 5. Inform the customer that CPNI does not include published information, whether  
 21 listed or non-listed, such as their name, telephone number, and address, and this information is not  
 22 subject to the same limitations of use." This rule is consistent with the practice of implied  
 23 authorization to publish and establishes no substantive duty on the carriers.

24 **Resolution:** No change required.  
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**R14-2-2103 – Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services.**

**R14-2-2103(A)(1)**

**Issue:** Citizens states that Staff's proposed rules require opt-in or opt-out for marketing any telecommunications related services to a particular customer and contends that this conflicts with the FCC rules.

**Analysis:** See discussion of R14-2-2101, above.

**Resolution:** No change is necessary.

**R14-2-2103(D)**

**Issue:** Qwest, Sprint, Arizona Wireless Carriers, MCI, Citizens and Verizon object to the requirement that carriers execute a proprietary agreement with any entity with whom the carrier shares CPNI. This requirement applies to affiliates that provide communications-related services. Carriers take the position that carrier affiliates share an interest in maintaining the customer relationship, and therefore misuse of CPNI by affiliates is not likely. These carriers further object because Staff's proposed rules require a proprietary agreement with joint ventures, independent contractors and affiliates, where the FCC rules require a confidentiality agreement only with the first two types of entities, and not with affiliates.

Staff states that the carriers' assurances regarding affiliates' interest in maintaining the customer relationship is insufficient to ensure the protection of CPNI. Therefore, Staff states, to the extent that affiliates providing telecommunications services do not fall under the jurisdiction of the Corporation Commission, proprietary agreements are necessary to ensure that the CPNI disseminated to those entities remains confidential.

**Analysis:** It is axiomatic that CPNI is sensitive personal information. We take the position that CPNI is sufficiently important to warrant the security of such proprietary agreements to ensure that customers' information is protected.

**Resolution:** No change is necessary.

**Issue:** Arizona Wireless Carriers, MCI and Sprint note that the Total Services Approach<sup>1</sup> is not explicitly set forth in the proposed rules, and state that the proposed rules contradict the Total Services Approach because it requires opt-out or opt-in approval for the purpose of marketing communications-related services to a customer.

Staff states its intention to use the Total Services Approach, and addresses this concern by recommending the following italicized language be added to R14-2-2103(A)(1);

A telecommunications carrier may, subject to opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing *to that customer* communications-related services of a category to which the customer does not already subscribe ~~to that customer~~<sup>2</sup>, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

An additional clarification should be made to prevent confusion regarding when a telecommunications carrier may disclose CPNI subject to this rule. This clarification is addressed with the following italicized language added to R14-2-2103(A)(1):

A telecommunications carrier may, subject to *obtaining* opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

**Analysis:** We agree with Staff. We further believe that the clarifying language describing when CPNI may be disseminated is appropriate.

<sup>1</sup> The Total Services Approach permits carriers to use, disclose or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service to which the customer already subscribes (47 C.F.R. § 64.2005(a)).

<sup>2</sup> In Staff's proposed language, the original phrase "to that customer" was not stricken to avoid redundancy. It is stricken here.



**Resolution:** We adopt the changes set forth above in order to ensure that Arizona permits carriers to use, disclose or permit access to CPNI for the purpose of providing or marketing service offerings to its customers among the categories of service to which a customer already subscribes and to require opt-in or opt-out approval to provide or market service offerings to customers among the categories of service to which the customer does not already subscribe.

**R14-2-2104 – Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates that Do Not Provide Communications-Related Services.**

**R14-2-2104(D)**

**Issue:** MCI and Sprint concur with Qwest's objection to the requirement that carriers secure express written customer consent before CPNI may be transferred to unaffiliated third parties.

**Analysis:** To the extent that third parties and affiliates that do not provide telecommunications services do not fall under the jurisdiction of the Corporation Commission, written consent is necessary to ensure that the CPNI disseminated to those entities remains confidential. We believe that requiring express written customer consent prior to transferring CPNI to unaffiliated third parties and affiliates that do not provide communications-related services is a reasonable method to ensure protection of that sensitive customer information.

**Resolution:** No change is necessary.

**R14-2-2105 – Information Requirements for Customer CPNI Opt-In Notice.**

**R14-2-2105(A)(1)**

**Issue:** AT&T and Citizens state, and MCI and Sprint concur, that the requirement that the notice contain the definition of CPNI contained in Section 222 of the Act will result in confusion for the customer. The carriers state that the FCC requirement that the notification specify the type of information that constitutes CPNI permits the telecommunications carrier flexibility and aids in reader comprehension.

Staff agrees that the regulatory definition of CPNI may cause confusion to customers; therefore Staff recommends that the following italicized language be added to R14-2-2105(A)(1):

A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must: 1. Include *language the same as or substantially similar to* the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

**Analysis:** Legal terminology may be overly complex and difficult to understand for the customer.

**Resolution:** We agree with and adopt Staff's recommended changes as set forth above to ensure that customers will receive an accurate but straightforward explanation of CPNI notice.

#### R14-2-2105(A)(4)

**Issue:** MCI and Sprint join in Qwest's contention that the requirement that the notice inform the customer that CPNI includes "all information related to specific calls initiated or received by a customer" misstates existing law.

**Analysis:** CPNI is defined at 47 USC § 222(h)(1)(A) and (B), revised 1999, and at proposed rule R14-2-2102(5), as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

R14-2-2105(A)(1) requires that customers are given notice of what information makes up CPNI with a more detailed statement. Although R14-2-2105(A)(4) does not state the definition verbatim, it does not misstate the existing definition in 47 USC § 222(h)(1)(A) and (B), revised 1999.

1 **Resolution:** No change is necessary.

2 **R14-2-2105(A)(6)**

3 **Issue:** MCI and Sprint concur in Qwest's objection to the language of this rule. Qwest  
4 prefers language such as that of the federal rules, that "[c]arriers may provide a brief statement, in  
5 clear and neutral language, describing consequences directly resulting from the lack of access to  
6 CPNI." 47 C.F.R. § 64.2008(c)(3).

7  
8 **Analysis:** The language of Staff's proposed rule requires that notification to obtain opt-in  
9 approval must "[i]nform the customer that deciding not to approve the release of CPNI will not affect  
10 the provision of any services to which the customer subscribes." Carriers may prefer the broader  
11 language they proffered; however, they fail to convince us that their proposed language has a  
12 significant benefit versus Staff's proposed language. The language proposed by the carriers allows  
13 for potential advisement of any consequence, relevant or not, that may result from lack of access to  
14 CPNI. Because CPNI is a sensitive and highly touted commodity, we do not wish to inadvertently  
15 authorize carriers to provide disincentives for customers who choose not to opt-in or who choose to  
16 opt-out. Therefore, we prefer Staff's proposed language.

17 **Resolution:** No change is necessary.

18  
19 **R14-2-2105(B)(1)**

20 **Issue:** Sprint, MCI and Citizens object to the requirements of this section, R14-2-2105(B)(2),  
21 and R14-2-2105(C)(2) that written notices be mailed separately or as a bill insert within a clearly  
22 marked envelope, and that written and electronic notices be printed in twelve-point or larger type.  
23 Carriers contend that this requirement is burdensome and goes beyond the FCC's rules.

24  
25 Staff contends that written and electronic notices sent to customers to obtain opt-in or  
26 opt-out approval must be clear and easy for customers to read. After consideration of industry  
27 comments on Staff's Second Draft Rules, Staff amended R14-2-2105(B)(1) to allow carriers to  
28

1 include written notices within customer bills. Staff maintains that if written notice is included as a  
 2 bill insert, the envelopes should be clearly marked to inform customers that important privacy  
 3 information is enclosed. Responses to Staff's First and Second Data Requests indicate that many  
 4 carriers provide notice only in English, provide notice only once to each customer with no follow-up  
 5 and fail to clearly mark the notice. Staff states that minimum requirements governing content and  
 6 format of written or electronic notices ensure that customers have the opportunity to make informed  
 7 decisions as to the dissemination of their CPNI.

8 **Analysis:** We agree with Staff.

9 **Resolution:** No change is necessary.

10 **R14-2-2105(B)(2)**

11 **Issue:** Qwest, Citizens, MCI and Sprint object to the requirement of this section that written  
 12 and electronic notices be printed in twelve-point or larger type. Carriers contend that this  
 13 requirement is burdensome and goes beyond the FCC's rule.

14 **Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(1).

15 **Resolution:** No change is necessary.

16 **R14-2-2105(B)(3)**

17 **Issue:** Citizens, MCI and Sprint state that the requirements of this section and R14-2-  
 18 2105(C)(3) to print written or electronic notice in both English and Spanish unless the customer has  
 19 previously expressed a preferred language is too inflexible. Citizens notes that the FCC rules  
 20 authorize carriers to translate written or electronic notices into a language appropriate to the specific  
 21 customer, which may not be Spanish.

22 Responses to Staff's First and Second Data Requests indicate that many carriers  
 23 provide notice only in English, provide notice only once to each customer with no follow-up and fail  
 24 to clearly mark the notice. Staff states that R14-2-2105(B)(3) and R14-2-2105(C)(3) afford the  
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flexibility desired by carriers by providing for a previously-established preferred language of a customer without specifying that this language must be English or Spanish.

**Analysis:** Both English and Spanish are languages spoken with great frequency in Arizona. The requirement that notices be provided in both languages to customers is an appropriate baseline for the communities of Arizona to ensure understanding, and yet allows for customers whose primary language may be other than English or Spanish to request notice in their own language.

**Resolution:** No change is necessary.

#### R14-2-2105(C)(2)

**Issue:** Citizens, MCI and Sprint object to the requirement of this section that electronic notices be printed in twelve-point or larger type. Carriers contend that this requirement is burdensome and goes beyond the FCC's rules.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(1).

**Resolution:** No change is necessary.

#### R14-2-2105(C)(3)

**Issue:** Citizens, MCI and Sprint object to the requirement of this section that electronic notices be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone. Carriers contend that this requirement is burdensome and goes beyond the FCC's rules.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(3).

**Resolution:** No change is necessary.

#### R14-2-2108 – Verification of Customer Opt-Out Approval to Use CPNI.

**Issue:** Qwest, Sprint, Arizona Wireless Carriers, MCI, Cox Arizona Telecom and Citizens object to this section, claiming that it is an unconstitutional restriction on free speech.

Staff acknowledges that cases cited by the carriers have found that an opt-in approval process prior to the release of CPNI is unconstitutional in some cases. However, Staff states that the proposed rules are consistent with the FCC rules with respect to the approval mechanism required for release of a customer's CPNI. Staff notes that this section adds a verification requirement, which has not been the subject of judicial review. The proposed rule gives carriers one year to verify a customer's CPNI release election and allows carriers to request additional time if verification is not accomplished within a year.

**Analysis:** The United States Supreme Court established a four-prong test on the constitutionality of regulating commercial speech in the matter of *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557 (1980). First it must be determined whether the expression in question is protected by the First Amendment; in this, a case of commercial speech, the expression must concern lawful activity and not be misleading, and second; whether the asserted governmental interest in regulating the commercial speech is substantial. If the answer to the first two prongs is affirmative, the third consideration is whether the regulation directly advances the governmental interest asserted, and, fourth, it must be determined whether the regulation is narrowly tailored to serve that interest. *Id.* at 566.

Carriers and Staff disagree whether the proposed CPNI rules infringe on carriers' First Amendment rights. Carriers assert that the restriction on the use of CPNI is an infringement on their right to commercial speech and cite to *U.S. West v. the Federal Comm. Comm'n*, 182 F.3d 1224 (10<sup>th</sup> Cir. 1999). Staff argues that the CPNI restrictions amount only to regulation of carriers' methods of collecting and using CPNI, which Staff asserts does not limit carriers' communication or expressive activities toward a willing audience.

To the extent that the proposed rules implicate First Amendment issues relating to carriers' abilities to communicate customer CPNI with affiliates or other third parties, we agree that

1 they are engaging in commercial speech that is lawful and is not misleading. We also believe that the  
2 dissemination of CPNI by a regulated entity implicates a substantial government interest in protecting  
3 the rights of ratepayers to control that dissemination.

4           Subscribing to some form of telecommunications service is inevitable in all but the  
5 narrowest of circumstances. What telecommunications carriers do with the CPNI of these customers,  
6 a valuable yet sensitive commodity, is then out of customers' control except through market influence  
7 and state regulation. Staff's proposed CPNI rules amount to time, place, and manner restrictions.  
8 Staff cites several national consumer surveys by Harris Interactive showing that customers are  
9 concerned that "companies they patronize will provide their information to other companies without  
10 [their] permission" (Staff's Response Comments, filed Jan. 19, 2005, at 9 (citations omitted)) and that  
11 customers are taking responsibility for protecting their own privacy.  
12

13           In this case, the CPNI rules were promulgated as a direct result of concern on the part  
14 of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001  
15 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm  
16 of consumer phone calls and letters to the Corporation Commission from people concerned about the  
17 safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting  
18 specifically to address customer's concerns about this very issue. Many customers appeared and  
19 spoke before the Commission regarding their grave concerns regarding the release of their CPNI.  
20 Many stated their desire that the release of their CPNI should be their choice, rather than their  
21 telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of their CPNI.  
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23

24           The proposed rules directly advance the state's interest in protecting the customers'  
25 information and engaging the customer in an active and informed way in controlling how  
26 telecommunications carriers use and disseminate, or whether they disseminate, CPNI.  
27  
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Staff's proposed CPNI rules are narrowly tailored to serve the interests articulated above. The benefits of protecting customer information outweigh the comparatively minimal burden that the time, place and manner restrictions on commercial speech the proposed rules place on the carriers.

**Resolution:** No change is necessary.

**R14-2-2109 – Confirming a Customer's Opt-In Approval.**

**Issue:** Qwest, MCI and Sprint object to the requirement that carriers provide a customer written confirmation within ten days of receiving that customer's opt-in approval. The written confirmation must be mailed or e-mailed separately, and carriers state that this requirement is unnecessary, burdensome and costly.

Staff states that a customer's opt-in approval allows a carrier to use, disclose, or permit access to that customer's CPNI to third parties and affiliates that do not provide communications-related services, and which thereby do not fall under the jurisdiction of the Corporation Commission. Staff states that a customer should have the opportunity to notify the carrier in the event that the customer's opt-in approval was unintended or erroneous.

**Analysis:** We agree with Staff that this requirement is necessary and find that the benefit of protecting a customer's choice on use of CPNI outweighs the burden and cost of the confirmation process.

**Resolution:** No change necessary.

**R14-2-2110 – Reminders to Customers of Their Current CPNI Release Election.**

**Issue:** Qwest, MCI and Sprint object to the requirement that carriers provide annual reminders to customers that have given opt-in or opt-out approval of their election regarding CPNI. The annual reminders must be mailed or e-mailed separately from the customer's bill and advertising



1 or promotional information. Carriers argue that this requirement is unnecessary, burdensome and  
2 costly.

3 Staff states that customers should be kept informed of their elections regarding the  
4 treatment of the CPNI, and annual reminders ensure that customers' ongoing approval continues to be  
5 knowing and informed.

6 **Analysis:** We agree with Staff. Customers may subscribe to services from more than one  
7 company. The annual reminder affords customers the opportunity to revise their CPNI election if  
8 they choose.  
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10 **Resolution:** No change is necessary.  
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Appendix CECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**A. Economic, small business and consumer impact summary****1. Proposed rulemaking.**

The proposed new rules govern the treatment of Customer Proprietary Network Information ("CPNI") for all telecommunications companies that provide telecommunications service in Arizona. These rules are in addition to the Commission's adoption and incorporation of federal rules under 47 CFR § 64.2001 through 2009, revised as of September 20, 2002.

**2. Brief summary of the economic impact statement.**

The proposed rules provide processes for exchange of customer information, depending upon the level of service subscribed to by the customer from the carrier, between the carrier, the carriers' affiliates and third parties in order to avoid violation of customers' U. S. Constitution Fourth Amendment rights and Arizona constitutional protections under Article 2, Section 8.

Costs of the proposed rules would depend upon the process required to obtain a customer's informed consent to release his or her CPNI. The proposed Arizona rules provide for an "opt-out" process, with a verification requirement within ten days of receipt of customer approval, and an "opt-in" process, which requires customers to affirmatively consent to use of CPNI.

The primary benefits of the proposed rules are to insure protection of Arizona citizens' rights to privacy as required in the Arizona Constitution, to further a significant state interest and to comply with the Federal Communications Commission's (FCC) Third Report and Order (FCC 02-214 Rel. July 25, 2002), 47 USC 222 and rules promulgated from remand in 47 CFR 64.2001 et seq.

The proposed rules are deemed to be the least intrusive and least costly approach of achieving the purposes of protecting citizens' constitutional rights and commercial interests of telecommunications carriers.

**3. Name and address of agency employees to contact regarding this statement.**

Wil Shand and Maureen Scott, Esq. at the Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007.

**B. Economic, small business and consumer impact statement.**

**1. Identification of the proposed rulemaking.**

The proposed rules will be a new section under Title 14, Chapter 2 – Corporation Commission Fixed Utilities, will provide compliance with FCC regulations and will impose requirements to protect consumers in accordance with the Arizona Constitution.

**2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.**

All telecommunications service providers and subscribers in Arizona.

**3. Cost-benefit analysis.**

**a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rules.**

Costs of the proposed rules will include the costs related to expanding the tasks involved in reviewing applications for CC&Ns and review of compliance measures. The specificity of these rules should reduce the number of customer and carrier-to-carrier complaints. Costs may include, in addition to review of applications and compliance reports, the costs of processing requests for waiver of the rules and the costs of any additional compliance and enforcement proceedings that may arise.

The benefits of the proposed rules are assurances that consumers will be afforded safeguards to insure confidentiality of individual-specific information and provision of implementation rules in order to regulate carriers' and monitor compliance with federal and now state regulations.

**b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rules.**

Implementation of the proposed rules should not result in any increased cost to any political subdivision. To the extent political subdivisions may be subscribers of telecommunications services in Arizona, the political subdivision will benefit by notice and opportunity to protect individual-specific information.

**c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated affect on the**

**revenues or payroll expenditure of employers who are subject to the proposed rulemaking.**

Costs to telecommunications service providers would be incurred by providers complying with the federal regulations.

Costs to telecommunications service providers may include:

The costs associated with providing notice and opportunity for subscriber to exercise right to deny provision of customer proprietary information;

The costs associated with notification to all affected customers of the time period to "opt-out";

The costs associated with maintaining consent records of subscribers;

The costs associated with training personnel and monitoring marketing practices to insure appropriate handling of CPNI.

**4. Probable impacts on private and public employment in business, agencies, and political subdivision of this state directly affected by the proposed rules.**

Private employment may be affected initially by implementation of the proposed rules, however, the requirements for notice, opportunity, verification and record maintenance could be incorporated into policies and procedures when contacting individual subscribers. It is doubtful that public employment would be significantly affected.

**5. Probable impact of the proposed rulemaking on small business.**

**a. Identification of the small businesses subject to the proposed rules.**

It is difficult to determine to what extent small businesses as defined under A.R.S. §41-1001 (19) will be affected by the proposed rules. Costs would substantially increase if CPNI were subject to sharing with affiliates and joint venture partners, which may not affect a small business. Compliance may only require implementing the "opt-out" approach.

**b. Administrative and other costs required for compliance with this proposed rules.**

Costs to the Commission of the proposed rules may likely include the costs related to expanding the tasks involved in reviewing CC&N

applications by telecommunications service providers. Costs may include, in addition to review of applications, the costs of processing requests for waiver of the rule and the costs of any additional compliance and enforcement proceedings that may arise.

Costs to telecommunications service providers may include: the costs associated with filing of an CC&N Application; the costs associated with notification to all customers; the costs associated with ensuring all personnel are adequately trained and records are appropriately maintained and costs associated with monitoring affiliates and joint venture partners for compliance.

**c. A description of the methods that the agency may use to reduce the impact on small businesses.**

The proposed rules do not require any greater cost impact on small businesses than that required by the federal regulations. Cost impact on small businesses may be mitigated by request for a waiver of some of the Arizona requirements so long as customers' rights are not violated.

**d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rules.**

Consumers should not experience any material increase in costs associated with the proposed rules. Consumers will benefit by the safeguards implemented to protect confidential information.

**6. A statement of the probable effect on state revenues.**

The proposed rules may result in an increase in state revenues if penalties are imposed on service providers for noncompliance.

**7. A description of any less intrusive or less costly alternative method of achieving the purpose of the proposed rule amendment.**

There is no less intrusive or less costly alternative method of achieving the purpose of the proposed rules as costs would be incurred by providers to implement the federal regulations. There would be very little additional costs to implement these proposed rules.

**8. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.**

Some but not adequate data was available to comply with the requirements of subsection B, therefore, the probable impacts are explained in qualitative terms.